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LAW OFFICES

UNITED STATES DEPARTMENT OF JUSTICE

Before The
Federal Communications Commission
 Washington, D.C. 20554

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MAY 17 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

MM Docket No. 93-51**MARTHA J. HUBER, et al.,**

For Construction Permit for a
 New FM Station on Channel 234A
 in New Albany, Indiana

TO: The Honorable Richard L. Sippel
 Administrative Law Judge

REPLY TO OPPOSITION OF STATON COMMUNICATIONS, INC.

Rita Reyna Brent ("Brent"), by her attorneys, respectfully replies to the May 11, 1993, Opposition to Motion to Enlarge Issues Against Staton Communications, Inc. ("Motion"). In support hereof the following is shown:

1. The Motion points out that the Staton Communications, Inc. ("Staton") bank commitment letter explicitly relies on the *participation* of both Staton shareholders -- the voting shareholder, Ms. Mildred Staton, and Mr. Kenneth Ramsey, the purportedly insulated nonvoting shareholder. Indeed, assurance of such participation would have to be "part of the loan application," thereby nullifying Staton's pledge to the Commission (and its corporate restrictions) that the nonvoting shareholder would be uninvolved in station operations.¹ In light of

¹ See, e.g., Paragraph 1 of Staton's integration statement which is Exhibit C to the Motion.

Staton's apparent inability to satisfy the bank's loan condition, Brent moved for specification of a financial issue.

2. Staton's opposition purports to resolve "any ambiguity which might have been present in the original bank letter." Mot. 1.² The banker, Mr. W.A. Gainey, states more than two years after the fact that when he authored the commitment letter he knew that Mr. Ramsey would not be personally involved in station *management*. He assures that when he said in his November 15, 1991, letter that "The Bank is favorably acquainted with *you* and we would be relying on *your* commitment to continued participation in the venture and the *management* of the radio station as a part of the loan application" (emphasis added), the bank "assumed that Ms. Staton (the voting shareholder) would manage the radio station." In other words, "you" meant Mr. Ramsey only, but "your" meant Mr. Ramsey and Ms. Staton, but not necessarily Mr. Ramsey.

3. The banker's *post hoc* explanation is porous, particularly in light of the facts that he has long been acquainted with Mr. Ramsey, and was not personally acquainted with Ms. Staton. His explanation is also inconsistent with the plain language of his November 1991, letter. And his explanation is incomplete: Mr. Gainey stated that in order to secure the loan Mr. Ramsey would have to be a *participant* ("we would be relying on your continued participation") in the station's business, although not, as he now tells it, a participant in management. It is absolutely clear that as a nonvoting shareholder Mr. Ramsey is precluded from any form of participation in Staton's broadcast venture. As Staton's charter makes

² Unlike Staton, Brent sees no ambiguity in the bank letter, which was addressed to both Staton shareholders.

plain, station management is only one form of participation. Mr. Gainey's Declaration reaffirms the bank's requirement of Mr. Ramsey's continued participation in the FM venture in order for Staton to be eligible for a loan.³

4. Finally, Mr. Gainey's Declaration recounts information allegedly given to him by Mr. Ramsey; *e.g.*, that "Mr. Ramsey...would not be personally involved in the management of the radio station." Declaration 2. Section 1.229(d), 47 C.F.R. § 1.229(d), requires that factual rebuttal be "supported by affidavits of a person or persons having personal knowledge thereof." Mr. Ramsey provided no verification of the information that he allegedly conveyed to Mr. Gainey, and no verification of other facts set forth in the Opposition. Such verification is crucial to avoid enlargement.

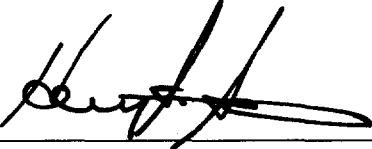
5. The supplemental bank letter does not fully address and resolve the issue raised in the Motion, and Staton has not complied with the verification requirement of § 1.229. A substantial and material question remains and the requested financial issue must therefore be added. *See David Ortiz Radio Corp. v. FCC*, 941 F.2d 1253 (D.C. Cir. 1991). Accord,

³ Article 3.b) of Staton's Articles of Incorporation, submitted as Exhibit B to the Motion, would bar a nonvoting shareholder from all forms of participation in corporate affairs, including employment, service as an independent contractor or agent, and from communications with the voting shareholder, Ms. Staton.

Weyburn Broadcasting Limited Partnership, No. 91-1378, slip op. at 13
(D.C. Cir. Feb. 12, 1993).

Respectfully submitted,

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May 17, 1993

CERTIFICATE OF SERVICE

I, Dinah L. Hood, a secretary in the law firm of Haley, Bader & Potts, hereby certify that a copy of the foregoing **"Reply To Opposition Of Staton Communications, Inc."** was mailed, postage pre-paid, this 17th day of May, 1993 to the following:

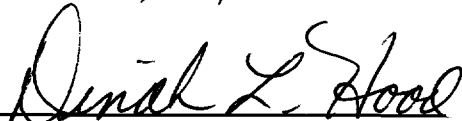
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